

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:20-cr-104

vs.

BRANDON L. HARRISON,

District Judge Michael J. Newman

Defendant.

**ORDER DENYING DEFENDANT'S MOTION FOR A SENTENCING TRANSCRIPT
PURSUANT TO THE CRIMINAL JUSTICE ACT (Doc. No. 44)**

Defendant Benjamin L. Harrison previously pled guilty, and the Court accepted his guilty plea, to one count of being a felon in possession of a firearm. Doc. No. 29. The case is before the Court upon Defendant's *pro se* motion for a sentencing transcript pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Defendant explains he would like to file a post-conviction pleading and needs a copy of his sentencing transcript, without prepayment of fees, "in order to perfect such a pleading[.]" Doc. No. 29 at PageID 179-80.

Defendant did not file a notice of appeal and the time for doing so has passed. See Fed. R. App. P. 4(b)(1)(A)(i) ("[A] defendant's notice of appeal must be filed in the district court within 14 days after the later of ... the entry of either the judgment or the order being appealed ..."). Because he did not pursue a direct appeal, and construing his *pro se* motion liberally in his favor, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), his intention to seek post-conviction relief would proceed under 28 U.S.C. § 2255 in a motion to vacate, set aside, or correct his sentence. "Fees for transcripts furnished in proceedings brought under section 2255 ... to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is

not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.” 28 U.S.C. § 753(f). Defendant has not presented argument or information about any issue he seeks to raise in a § 2255 motion or whether any such issue is, or is not, frivolous. *See* Doc. No. 29 at 179-80. In addition, Defendant “does not have a right to a transcript at government expense under ... § 753(f) in order to search the transcript for yet unasserted grounds in a motion to vacate his sentence under 28 U.S.C. § 2255.”¹ *United States v. Alcorn*, 10 Fed. App’x 248, 248 (6th Cir. 2001); *see United States v. Cook*, 3 Fed. App’x 449, 451 (6th Cir. 2001); *see also Silvers v. United States*, No. 1:09-cv-134, 2010 WL 1491955, at *2 (E.D. Tenn. 2010) (“There is no right to a transcript until after a nonfrivolous § 2255 motion is filed”) (collecting cases).

Consequently, the Court **DENIES** Defendant’s motion for a copy of his sentencing transcript without cost or fees.

IT IS SO ORDERED.

October 29, 2024

s/Michael J. Newman
Hon. Michael J. Newman
United States District Judge

¹ “Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).” 28 U.S.C. § 753(f). In the event Defendant intends to pursue such an appeal, he has not presented any ground for determining whether the appeal is, or is not, frivolous.